

By Senator Bradley

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1 A bill to be entitled
2 An act relating to controlled substances; amending s.
3 893.13, F.S.; prohibiting the purchase or possession
4 of less than a certain amount of specified substances;
5 providing criminal penalties; amending s. 893.135,
6 F.S.; authorizing a court to impose a sentence other
7 than a mandatory minimum term of imprisonment and
8 mandatory fine for a person convicted of trafficking
9 if the court makes certain findings on the record;
10 creating s. 900.06, F.S.; defining terms and
11 specifying covered offenses; requiring that a
12 custodial interrogation conducted at a place of
13 detention in connection with certain offenses be
14 electronically recorded in its entirety; requiring law
15 enforcement officers who do not comply with the
16 electronic recording requirement or who conduct
17 custodial interrogations at a location other than a
18 place of detention to prepare a specified report;
19 providing exceptions to the electronic recording
20 requirement; requiring a court to consider a law
21 enforcement officer's failure to comply with the
22 electronic recording requirement in determining the
23 admissibility of a statement, unless an exception
24 applies; requiring a court, upon the request of a
25 defendant, to give certain cautionary instructions to
26 a jury under certain circumstances; providing immunity
27 from civil liability to law enforcement agencies that
28 enforce certain rules; providing that a cause of
29 action is not created against a law enforcement

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30 officer; amending s. 961.04, F.S.; revising the
31 circumstances under which a wrongfully incarcerated
32 person is eligible for compensation; amending s.
33 893.03, F.S.; conforming a cross-reference; reenacting
34 ss. 961.02(4) and 961.03(1)(a), (2), (3), and (4),
35 F.S., all relating to eligibility for compensation for
36 wrongfully incarcerated persons; providing an
37 effective date.

38
39 Be It Enacted by the Legislature of the State of Florida:

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41 Section 1. Present subsection (10) of section 893.13,
42 Florida Statutes, is redesignated as subsection (11), and a new
43 subsection (10) is added to that section, to read:

44 893.13 Prohibited acts; penalties.—

45 (10) Notwithstanding any provision of this section or any
46 other law relating to the punishment for purchasing or
47 possessing a controlled substance, a person who purchases or
48 possesses less than 2 grams of a controlled substance, other
49 than fentanyl, may not be imprisoned for a term longer than 12
50 months.

51 Section 2. Present subsections (6) and (7) of section
52 893.135, Florida Statutes, are redesignated as subsections (7)
53 and (8), respectively, and a new subsection (6) is added to that
54 section, to read:

55 893.135 Trafficking; mandatory sentences; suspension or
56 reduction of sentences; conspiracy to engage in trafficking.—

57 (6) Notwithstanding any provision of this section, a court
58 may impose a sentence for a violation of this section other than

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59 the mandatory minimum term of imprisonment and mandatory fine if
60 the court finds on the record that all of the following
61 circumstances exist:

62 (a) The defendant has no prior conviction for a forcible
63 felony as defined in s. 776.08.

64 (b) The defendant did not use violence or credible threats
65 of violence, or possess a firearm or other dangerous weapon, or
66 induce another participant to use violence or credible threats
67 of violence, in connection with the offense.

68 (c) The offense did not result in the death of or serious
69 bodily injury to any person.

70 (d) The defendant was not an organizer, leader, manager, or
71 supervisor of others in the offense and was not engaged in a
72 continuing criminal enterprise as defined in s. 893.20.

73 (e) At the time of the sentencing hearing or earlier, the
74 defendant has truthfully provided to the state all information
75 and evidence that he or she possesses concerning the offense or
76 offenses that were part of the same course of conduct or of a
77 common scheme or plan.

78 (f) The defendant has not previously benefited from the
79 application of this subsection.

80
81 A court may not apply this subsection to an offense under this
82 section which carries a mandatory minimum term of imprisonment
83 of 25 years.

84 Section 3. Section 900.06, Florida Statutes, is created to
85 read:

86 900.06 Recording of custodial interrogations for certain
87 offenses.—

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88 (1) As used in this section, the term:

89 (a) "Custodial interrogation" means questioning or other
90 conduct by a law enforcement officer which is reasonably likely
91 to elicit an incriminating response from an individual and which
92 occurs under circumstances in which a reasonable individual in
93 the same circumstances would consider himself or herself to be
94 in the custody of a law enforcement agency.

95 (b) "Electronic recording" means an audio recording or an
96 audio and video recording that accurately records a custodial
97 interrogation.

98 (c) "Covered offense" includes:

- 99 1. Arson.
100 2. Sexual battery.
101 3. Robbery.
102 4. Kidnapping.
103 5. Aggravated child abuse.
104 6. Aggravated abuse of an elderly person or disabled adult.
105 7. Aggravated assault with a deadly weapon.
106 8. Murder.
107 9. Manslaughter.
108 10. Aggravated manslaughter of an elderly person or
109 disabled adult.
110 11. Aggravated manslaughter of a child.
111 12. The unlawful throwing, placing, or discharging of a
112 destructive device or bomb.
113 13. Armed burglary.
114 14. Aggravated battery.
115 15. Aggravated stalking.
116 16. Home-invasion robbery.

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117 17. Carjacking.

118 (d) "Place of detention" means a police station, sheriff's
119 office, correctional facility, prisoner holding facility, county
120 detention facility, or other governmental facility where an
121 individual may be held in connection with a criminal charge that
122 has been or may be filed against the individual.

123 (e) "Statement" means a communication that is oral,
124 written, electronic, nonverbal, or in sign language.

125 (2) (a) A custodial interrogation at a place of detention,
126 including the giving of a required warning, the advisement of
127 the rights of the individual being questioned, and the waiver of
128 any rights by the individual, must be electronically recorded in
129 its entirety if the interrogation is related to a covered
130 offense.

131 (b) If a law enforcement officer conducts a custodial
132 interrogation at a place of detention without electronically
133 recording the interrogation, the officer must prepare a written
134 report explaining why he or she did not record the
135 interrogation.

136 (c) As soon as practicable, a law enforcement officer who
137 conducts a custodial interrogation at a location other than a
138 place of detention shall prepare a written report explaining the
139 circumstances of the interrogation and summarizing the custodial
140 interrogation process and the individual's statements.

141 (d) Paragraph (a) does not apply:

142 1. If an unforeseen equipment malfunction prevents
143 recording the custodial interrogation in its entirety;

144 2. If a suspect refuses to participate in a custodial
145 interrogation if his or her statements are to be electronically

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146 recorded;

147 3. If an equipment operator error prevents recording the
148 custodial interrogation in its entirety;

149 4. If the statement is made spontaneously and not in
150 response to a custodial interrogation question;

151 5. If the statement is made during the processing of the
152 arrest of a suspect;

153 6. If the custodial interrogation occurs when the law
154 enforcement officer participating in the interrogation does not
155 have any knowledge of facts and circumstances that would lead an
156 officer to reasonably believe that the individual being
157 interrogated may have committed a covered offense;

158 7. If the law enforcement officer conducting the custodial
159 interrogation reasonably believes that making an electronic
160 recording would jeopardize the safety of the officer, the
161 individual being interrogated, or others; or

162 8. If the custodial interrogation is conducted outside of
163 this state.

164 (3) Unless a court finds that one or more of the
165 circumstances specified in paragraph (2) (d) apply, the court
166 must consider the circumstances of an interrogation conducted by
167 a law enforcement officer in which he or she did not
168 electronically record all or part of a custodial interrogation
169 in determining whether a statement made during the interrogation
170 is admissible. If the court admits into evidence a statement
171 made during a custodial interrogation that was not
172 electronically recorded as required under paragraph (2) (a), the
173 court must, upon request of the defendant, give cautionary
174 instructions to the jury regarding the law enforcement officer's

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175 failure to comply with that requirement.

176 (4) A law enforcement agency in this state which has
177 enforced rules adopted pursuant to this section which are
178 reasonably designed to ensure compliance with the requirements
179 of this section is not subject to civil liability for damages
180 arising from a violation of this section. This section does not
181 create a cause of action against a law enforcement officer.

182 Section 4. Section 961.04, Florida Statutes, is amended to
183 read:

184 961.04 Eligibility for compensation for wrongful
185 incarceration.—A wrongfully incarcerated person is not eligible
186 for compensation under the act if any of the following apply:

187 ~~(1) Before the person's wrongful conviction and~~
188 ~~incarceration, the person was convicted of, or pled guilty or~~
189 ~~nolo contendere to, regardless of adjudication, any violent~~
190 ~~felony, or a crime committed in another jurisdiction the~~
191 ~~elements of which would constitute a violent felony in this~~
192 ~~state, or a crime committed against the United States which is~~
193 ~~designated a violent felony, excluding any delinquency~~
194 ~~disposition;~~

195 ~~(2) Before the person's wrongful conviction and~~
196 ~~incarceration, the person was convicted of, or pled guilty or~~
197 ~~nolo contendere to, regardless of adjudication, more than one~~
198 ~~felony that is not a violent felony, or more than one crime~~
199 ~~committed in another jurisdiction, the elements of which would~~
200 ~~constitute a felony in this state, or more than one crime~~
201 ~~committed against the United States which is designated a~~
202 ~~felony, excluding any delinquency disposition;~~

203 (1)-(3) During the person's wrongful incarceration, the

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204 person was convicted of, or pled guilty or nolo contendere to,
205 regardless of adjudication, any violent felony.~~†~~

206 (2)~~(4)~~ During the person's wrongful incarceration, the
207 person was convicted of, or pled guilty or nolo contendere to,
208 regardless of adjudication, more than one felony that is not a
209 violent felony.~~†~~~~or~~

210 (3)~~(5)~~ During the person's wrongful incarceration, the
211 person was also serving a concurrent sentence for another felony
212 for which the person was not wrongfully convicted.

213 Section 5. Paragraph (c) of subsection (3) of section
214 893.03, Florida Statutes, is amended to read:

215 893.03 Standards and schedules.—The substances enumerated
216 in this section are controlled by this chapter. The controlled
217 substances listed or to be listed in Schedules I, II, III, IV,
218 and V are included by whatever official, common, usual,
219 chemical, trade name, or class designated. The provisions of
220 this section shall not be construed to include within any of the
221 schedules contained in this section any excluded drugs listed
222 within the purview of 21 C.F.R. s. 1308.22, styled "Excluded
223 Substances"; 21 C.F.R. s. 1308.24, styled "Exempt Chemical
224 Preparations"; 21 C.F.R. s. 1308.32, styled "Exempted
225 Prescription Products"; or 21 C.F.R. s. 1308.34, styled "Exempt
226 Anabolic Steroid Products."

227 (3) SCHEDULE III.—A substance in Schedule III has a
228 potential for abuse less than the substances contained in
229 Schedules I and II and has a currently accepted medical use in
230 treatment in the United States, and abuse of the substance may
231 lead to moderate or low physical dependence or high
232 psychological dependence or, in the case of anabolic steroids,

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233 may lead to physical damage. The following substances are
234 controlled in Schedule III:

235 (c) Unless specifically excepted or unless listed in
236 another schedule, any material, compound, mixture, or
237 preparation containing limited quantities of any of the
238 following controlled substances or any salts thereof:

239 1. Not more than 1.8 grams of codeine per 100 milliliters
240 or not more than 90 milligrams per dosage unit, with an equal or
241 greater quantity of an isoquinoline alkaloid of opium.

242 2. Not more than 1.8 grams of codeine per 100 milliliters
243 or not more than 90 milligrams per dosage unit, with recognized
244 therapeutic amounts of one or more active ingredients which are
245 not controlled substances.

246 3. Not more than 300 milligrams of hydrocodone per 100
247 milliliters or not more than 15 milligrams per dosage unit, with
248 a fourfold or greater quantity of an isoquinoline alkaloid of
249 opium.

250 4. Not more than 300 milligrams of hydrocodone per 100
251 milliliters or not more than 15 milligrams per dosage unit, with
252 recognized therapeutic amounts of one or more active ingredients
253 that are not controlled substances.

254 5. Not more than 1.8 grams of dihydrocodeine per 100
255 milliliters or not more than 90 milligrams per dosage unit, with
256 recognized therapeutic amounts of one or more active ingredients
257 which are not controlled substances.

258 6. Not more than 300 milligrams of ethylmorphine per 100
259 milliliters or not more than 15 milligrams per dosage unit, with
260 one or more active, nonnarcotic ingredients in recognized
261 therapeutic amounts.

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262 7. Not more than 50 milligrams of morphine per 100
263 milliliters or per 100 grams, with recognized therapeutic
264 amounts of one or more active ingredients which are not
265 controlled substances.

266

267 For purposes of charging a person with a violation of s. 893.135
268 involving any controlled substance described in subparagraph 3.
269 or subparagraph 4., the controlled substance is a Schedule III
270 controlled substance pursuant to this paragraph but the weight
271 of the controlled substance per milliliters or per dosage unit
272 is not relevant to the charging of a violation of s. 893.135.
273 The weight of the controlled substance shall be determined
274 pursuant to s. 893.135(7) ~~s. 893.135(6)~~.

275 Section 6. For the purpose of incorporating the amendment
276 made by this act to section 961.04, Florida Statutes, in a
277 reference thereto, subsection (4) of section 961.02, Florida
278 Statutes, is reenacted to read:

279 961.02 Definitions.—As used in ss. 961.01-961.07, the term:

280 (4) "Eligible for compensation" means that a person meets
281 the definition of the term "wrongfully incarcerated person" and
282 is not disqualified from seeking compensation under the criteria
283 prescribed in s. 961.04.

284 Section 7. For the purpose of incorporating the amendments
285 made by this act to section 961.04, Florida Statutes, in
286 references thereto, paragraph (a) of subsection (1) and
287 subsections (2), (3), and (4) of section 961.03, Florida
288 Statutes, are reenacted to read:

289 961.03 Determination of status as a wrongfully incarcerated
290 person; determination of eligibility for compensation.—

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291 (1) (a) In order to meet the definition of a "wrongfully
292 incarcerated person" and "eligible for compensation," upon entry
293 of an order, based upon exonerating evidence, vacating a
294 conviction and sentence, a person must set forth the claim of
295 wrongful incarceration under oath and with particularity by
296 filing a petition with the original sentencing court, with a
297 copy of the petition and proper notice to the prosecuting
298 authority in the underlying felony for which the person was
299 incarcerated. At a minimum, the petition must:

300 1. State that verifiable and substantial evidence of actual
301 innocence exists and state with particularity the nature and
302 significance of the verifiable and substantial evidence of
303 actual innocence; and

304 2. State that the person is not disqualified, under the
305 provisions of s. 961.04, from seeking compensation under this
306 act.

307 (2) The prosecuting authority must respond to the petition
308 within 30 days. The prosecuting authority may respond:

309 (a) By certifying to the court that, based upon the
310 petition and verifiable and substantial evidence of actual
311 innocence, no further criminal proceedings in the case at bar
312 can or will be initiated by the prosecuting authority, that no
313 questions of fact remain as to the petitioner's wrongful
314 incarceration, and that the petitioner is not ineligible from
315 seeking compensation under the provisions of s. 961.04; or

316 (b) By contesting the nature, significance, or effect of
317 the evidence of actual innocence, the facts related to the
318 petitioner's alleged wrongful incarceration, or whether the
319 petitioner is ineligible from seeking compensation under the

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320 provisions of s. 961.04.

321 (3) If the prosecuting authority responds as set forth in
322 paragraph (2)(a), the original sentencing court, based upon the
323 evidence of actual innocence, the prosecuting authority's
324 certification, and upon the court's finding that the petitioner
325 has presented clear and convincing evidence that the petitioner
326 committed neither the act nor the offense that served as the
327 basis for the conviction and incarceration, and that the
328 petitioner did not aid, abet, or act as an accomplice to a
329 person who committed the act or offense, shall certify to the
330 department that the petitioner is a wrongfully incarcerated
331 person as defined by this act. Based upon the prosecuting
332 authority's certification, the court shall also certify to the
333 department that the petitioner is eligible for compensation
334 under the provisions of s. 961.04.

335 (4)(a) If the prosecuting authority responds as set forth
336 in paragraph (2)(b), the original sentencing court shall make a
337 determination from the pleadings and supporting documentation
338 whether, by a preponderance of the evidence, the petitioner is
339 ineligible for compensation under the provisions of s. 961.04,
340 regardless of his or her claim of wrongful incarceration. If the
341 court finds the petitioner ineligible under the provisions of s.
342 961.04, it shall dismiss the petition.

343 (b) If the prosecuting authority responds as set forth in
344 paragraph (2)(b), and the court determines that the petitioner
345 is eligible under the provisions of s. 961.04, but the
346 prosecuting authority contests the nature, significance or
347 effect of the evidence of actual innocence, or the facts related
348 to the petitioner's alleged wrongful incarceration, the court

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349 shall set forth its findings and transfer the petition by
350 electronic means through the division's website to the division
351 for findings of fact and a recommended determination of whether
352 the petitioner has established that he or she is a wrongfully
353 incarcerated person who is eligible for compensation under this
354 act.

355 Section 8. This act shall take effect July 1, 2020.